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15 *Attorneys for Defendant Google LLC*

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

19 CHASOM BROWN, WILLIAM BYATT,
20 JEREMY DAVIS, CHRISTOPHER
21 CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
GOOGLE LLC'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

22 Plaintiffs,

Referral: Hon. Susan van Keulen, USMJ

23 v.

24 GOOGLE LLC,
25 Defendant.

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Case No. 4:20-cv-03664-YGR-SVK

GOOGLE LLC'S ADMINISTRATIVE MOTION TO SEAL PORTIONS OF PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully
 3 seeks to seal certain portions of Google’s Proposed Findings of Fact and Conclusions of Law on
 4 Plaintiffs’ Request for an Order to Show Cause for Why It Should Not Be Sanctioned for Discovery
 5 Misconduct (“Proposed Findings”), which contains non-public, highly sensitive and confidential
 6 business information that could affect Google’s competitive standing and may expose Google to
 7 increased security risks if publicly disclosed, including details related to Google’s data signals, logs,
 8 project names, internal identifiers, Google’s internal practices with regard to Incognito and its
 9 proprietary functionalities, as well as internal metrics and investigation into financial impact of certain
 10 features. This information is highly confidential and should be protected.

11 This Administrative Motion pertains for the following information contained in the Special
 12 Master Submission:

13 Document	14 Portions to be Filed Under Seal	15 Party Claiming Confidentiality
16 Google’s Proposed 17 Findings of Fact and 18 Conclusions of Law	19 Portions Highlighted in Yellow at: Pages 1:18–19, 1:23, 2:9, 2:12, 2:18–19, 2:21– 22, 2:24–26, 3:1–7, 3:15, 3:20–22, 4:1, 4:5–6, 4:8, 4:15, 4:18, 5:13–18; 6:6–7, 6:17–19, 6:23–24, 6:27–28, 7:8–9, 7:11–13, 7:15, 7:17– 18, 7:24–25, 8:15–19, 8:21, 9:1, 9:9, 9:11, 9:15–16, 9:18, 9:20, 9:27, 10:10, 10:15, 12:4– 5, 12:17.	Google

20 **II. LEGAL STANDARD**

21 A party seeking to seal material must “establish[] that the document, or portions thereof, are
 22 privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is
 23 “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing
 24 only of sealable material.” *Id.*

25 In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a
 26 showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of*
Honolulu, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a
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1 non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower
 2 standard with respect to non-dispositive motions is that “the public has less of a need for access to
 3 court records attached only to non-dispositive motions because these documents are often unrelated,
 4 or only tangentially related, to the underlying cause of action” and that as a result “[t]he public
 5 policies that support the right of access to dispositive motions, and related materials, do not apply with
 6 equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v.*
 7 *McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-
 8 dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under
 9 the “good cause” standard, courts will seal statements reporting on a company’s users, sales,
 10 investments, or other information that is ordinarily kept secret for competitive purposes. *See*
 11 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride*
 12 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting
 13 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under
 14 “good cause” standard) (van Keulen, J.). Although the materials that Google seeks to seal here easily
 15 meet the higher “compelling reasons” standard, the Court need only consider whether these materials
 16 meet the lower “good cause” standard.

17 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

18 Courts have repeatedly found it appropriate to seal documents that contain “business
 19 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435
 20 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 21 “contain[] confidential information about the operation of [the party’s] products and that public
 22 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 23 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 24 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 25 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2
 26 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 27 standard where that information could be used to the company’s competitive disadvantage”) (citation
 28 omitted). Courts in this district have also determined that motions to seal may be granted as to

1 potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL
 2 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party] ha[s] not
 3 shown that the substance of the information . . . amounts to a trade secret”).

4 Here, the Proposed Findings comprise confidential and proprietary information regarding
 5 highly sensitive features of Google’s internal systems and operations that Google does not share
 6 publicly. Specifically, this information provides details related to Google’s data signals, logs, project
 7 names, internal identifiers, Google’s internal practices with regard to Incognito and its proprietary
 8 functionalities, as well as internal metrics and investigation into financial impact of certain features.
 9 Such information reveals Google’s internal strategies, system designs, and business practices for
 10 operating and maintaining many of its important services while complying with its legal and privacy
 11 obligations.

12 Public disclosure of the above-listed information would harm Google’s competitive standing it
 13 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 14 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
 15 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
 16 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive
 17 business information related to Google’s processes and policies to ensure the integrity and security of
 18 a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO,
 19 Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure
 20 would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting motion to seal
 21 as to “internal research results that disclose statistical coding that is not publically available”).

22 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 23 compromise Google’s data sources, including data logs, internal data structures, and internal identifier
 24 systems. Google would be placed at an increased risk of cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
 25 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”

1 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
2 threat is an additional reason for this Court to seal the identified information.

3 The information Google seeks to redact is the minimal amount of information needed to
4 protect its internal systems and operations from being exposed to not only its competitors but also to
5 nefarious actors who may improperly seek access to and disrupt these systems and operations. The
6 “good cause” rather than the “compelling reasons” standard should apply but under either standard,
7 Google’s sealing request is warranted.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court should seal the identified portions of the Proposed
10 Findings.

11 DATED: April 18, 2022

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13 SULLIVAN, LLP

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